

**MINUTE ENTRY**  
**FALLON, J.**  
**April 29, 2003**

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF LOUISIANA**

**IN RE: PROPULSID** : **MDL NO. 1355**  
**PRODUCTS LIABILITY LITIGATION** : **SECTION "L"**  
 : **JUDGE FALLON**  
..... :

**THIS DOCUMENT RELATES TO ALL CASES:**

A pretrial status conference was held Friday, April 25, 2003 at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Russ Herman, Leonard Davis, Arnold Levin, Chris Seeger, Sam Allen, Daniel E. Becnel, Jr., R. Larry Morris, Charles Zimmerman, and Stephen Murray. In attendance for the Defendants were James Irwin, Thomas Campion, and Monique Garsaud. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 22 of Plaintiffs' and Defendants' Liaison Counsel.

1. Update to Rolling Document Production and Electronic Document Production

Plaintiffs' Liaison Counsel ("PLC") and Defendants' Liaison Counsel ("DLC") informed the Court that the PLC had received 709,000 e-mails, which were currently under review. DLC advised that no further document production was scheduled. PLC also reported that some issues with CDs needed to be worked out with DLC.

2. State Liaison Counsel

PLC advised the Court that the State Liaison Committee ("SLC") would be submitting any hours expended in the litigation to the Court for an in camera inspection. The Court noted that by Minute Entry dated April 24, 2003 the Court had required PLC to deliver material concerning the withdrawal of funds for payment of costs and attorney's fees to SLC. The Court further noted that the hearing on the PLC's motion is set for Monday, May 5, 2003 at 10:00 a.m. Finally, PLC requested, and the Court agreed, that any material received by the SLC be kept under seal.

3. Plaintiff Profile Forms and Authorizations

DLC advised the Court that as of April 21, 2003, the defendants had received 2,015 PPFs, 189 are overdue, and 80 will become due within 30 days.

4. Service List of Attorneys

DLC provided the Court with an updated list of attorneys in the MDL case as well as related state court cases.

5. Third Party Subpoena Duces Tecum

PLC and DLC advised the Court of the status of the subpoena with respect to defense expert Dr. Douglas Zipes and the remuneration that he and his corporation have received from the defendants. PLC argued that any certification should come from Dr. Zipes, not from one of the defendants' attorneys. After hearing the arguments of the parties, the Court ORDERED Dr. Zipes and his corporation to collect any and all documentation in his possession regarding any bills or statements he has received from the defendants in connection with Propulsid and cisapride and provide them to the PLC within 2 weeks of the date of this Minute Entry.

PLC and DLC also discussed the third party subpoenas issued to McKinsey & Co. and the Degge Group. Following the conference, the Court held a telephone conference with representatives of the PLC, DLC, McKinsey & Co., and the Degge Group. Those conferences are memorialized in this Court's Minute Entries dated April 28, 2003.

6. Motion for Class Certification

In an Order dated June 27, 2002, this Court indicated that it would in due course set a hearing date in connection with the PSC's second motion for class certification [MDL Document No. 619]. At the status conference both DLC and PLC recommended to the Court that the hearing on the motion not be scheduled until after all electronic discovery is received and reviewed by the PSC. Accordingly, the Court will again DEFER setting a hearing date on this motion. Liaison Counsel should continue to make recommendations as to a future hearing date at each monthly status conference.

PLC reported to the Court that some outstanding discovery issues remained regarding the taking of depositions for perpetuation purposes and stipulations for depositions. PLC further advised that additional issues remained concerning outstanding requests for admissions and objections to those requests, whose time limits had been expanded.

Finally, PLC advised the Court that on March 13, 2003, class representative Virginia Gail Jones died in a house fire. Accordingly, the PLC would be interviewing potential class members to amend and substitute class members.

7. Plaintiffs' and Defendants' Respective Requests for Production of Documents

PLC advised the Court of certain outstanding issues on Merits Interrogatories. DLC advised that the answers to all outstanding issues would be produced by the end of May, 2003.

8. Rule 30(b)(6) Deposition of Defendants Regarding Studies

PLC and DLC indicated that the database was complete, and this item may be removed from the agenda.

9. Trust Account

Again, the parties noted that a hearing on the PLC's Motion for Release and Disbursement of Funds from Deposits Made to the Registry of the Court would be heard on Monday, May 5, 2003 at 10:00 a.m.

10. Declassified Documents

The parties advised that they had nothing new to report on this issue.

11. Mediation

DLC indicated its intent to continue the mediation process with Mr. Juneau. DLC advised the Court of the following statistics. As of April 17, 2003, 12 cases had settled at or following mediation. 5 cases were mediated without resolution. 2 more were voluntarily dismissed, and 47 cases did not meet the defendant's mediation criteria. DLC further advised that 15 cases would be scheduled for mediation, and more brochures were being evaluated. The Court advised the parties to continue working on mediations and utilizing the MDL Court's role as a vehicle for settling cases.

12. Trial of Louisiana Cases

The Court advised the parties that its ruling on the *Brock* motion would be issued shortly. The Court further advised the parties to the *Diez* case to work together and confer on issues that arose during the trial in an effort to resolve any glitches in the trial of future cases. The Court also advised the parties of its intent to begin setting future trial dates of cases originally filed in this Court.

PLC advised that DLC had furnished a list of upcoming trials, which would be supplemented with the names of counsel of record. DLC advised the Court of the following statistics. Currently, there are approximately 5,500 plaintiffs maintaining a Propulsid lawsuit; 8% of which are death cases.

13. End Game Planning Committee

Committee members Arnold Levin and Charles Zimmerman for the plaintiffs and Tom Campion for the defendants informed the court that the committee was working to resolve differences. Counsel requested a status conference with the Court to discuss these issues. Accordingly, IT IS ORDERED that a status conference will be held on Tuesday, May 13, 2003 at 1:30 p.m. to discuss end game issues.

14. Patricia Robinson Deposition

The Court ORDERED that this deposition shall take place at the conclusion of the trial currently underway in state court in California.

15. Scheduling of Next Pretrial Status Conference

The next pretrial status conference will be held on Thursday, May 22, 2003 at 9:00 a.m.